

Summary of Final Draft of Proposed Restructured Water Supply Agreement

Disclaimer: The following summary and interpretations are those of John Olaf Nelson and are prepared on behalf of the Water Advisory Committee (WAC).

Introduction:

The following summarizes significant changes contained in the Final Draft of the proposed Restructured Agreement for Water Supply (Restructured Agree.) relative to the Eleventh Amended Water Supply Agreement (11th Amend. Agree.). The Final Draft referred to was distributed to the WAC at its meeting of June 27, 2005. Section numbers refer to the new agreement section numbers unless specifically noted otherwise.

Items marked with an asterisk (*) pertain to new language introduced to cover matters that are dealt with in the existing Memorandum of Understanding Regarding Water Transmission System Capacity Allocation During Temporary Impairment (MOU) dated March 1, 2001. Said MOU will expire on September 30, 2005 but is expected to be replaced with the new MOU that has been negotiated between the parties – the so-called Extended MOU. The Extended MOU will terminate on September 30, 2008 (unless extended). The Extended MOU will not include the asterisked items since they are being included in the proposed Restructured Water Supply Agreement.

In reviewing changes to the 11th Amend. Agree., it is useful to keep in mind the following Sonoma County Water Agency (Agency) customer classifications:

Customers of the Agency that receive water (treated) from the Transmission System (aqueduct system):

- Water Contractors – proposed signers of the Restructured agreement (often referred to as prime contractors) (See Section 1.2 (yy))
- Other Agency Customers – Other aqueduct customers of the Agency as defined in section 1.2(u). Now includes Forestville Water District.
- Regular Customers - Water Contractors plus Other Agency Customers (Section 1.2(aa))
- Marin Municipal Water District – governed by separate agreements between itself and the Agency (Section 1.2(p))

Customers of the Agency that divert water directly from the Russian River or Dry Creek:

- Russian River Customers (Section 1.2 (gg))

PART 1 - GENERAL

1.1 Purpose

The Purpose of the agreement has been expanded to encourage conservation, recycled water use, development of local supplies and provision of environmental improvements and enhancements that allow for sustainable use of Russian River water.

1.2 Definitions

Note: Defined words now have first letter of each word CAPITALIZED throughout the agreement.

1.2(b), (c), (e), (l), (m), (n), (r), (y), (bb), (ff), (kk), (ll), and (pp) These subsections pertain to aqueduct facility definitions. They have been simplified and/or updated to: (1) conform to facility descriptions contained in the original Water Transmission System EIR including definition modifications relating to certain projects which were excepted by the judiciary from further EIR review (i.e. Collector #6), (2) reflect facility transitional provisions related to Forestville Water District (FWD) or, (3) reflect changes in category designation.

1.2(d) “Capital Cost” has been expanded to make clear that planning and EIR costs are included.

1.2(h) “Emergency Well” definition has been added.

1.2(i) and (j) “Entitlement” and Entitlement Limits” are now defined to avoid confusion as to how these terms are used in the new agreement.

1.2(n) “Kawana Pipeline” definition has been added.

1.2(o)* “Local Supply Project” definition has been added.

Old subsections 1.1(o), (ee) and (ff) have been deleted to reflect payoff of old bond issues.

1.2(u) “Other Agency Customers” are now specifically identified.

1.2(x), (y) and (z)* “Recycled Water”, “Recycled Water Sub-Charge” and “Recycled Water Project” definitions are added.

1.2(cc), (dd), and (qq) “Revenue Bond Obligations”, “Revenue Bonds” and “Trustee” definitions have been updated and expanded to include funding proceeding from any joint powers authority, loan agreement, grant, lease-purchase agreement,

certificate of participation, note, commercial paper or other debt or financing agreement entered into by Agency.

1.2(hh) “Russian River Project” definition is made more explicit.

1.2(nn) “Surplus Customer” definition has been added.

1.2(uu)* “Water Conservation Project” definition is added.

1.3 Term of Agreement

Changed from 2036 to 2040.

1.4 Previous Agreements Terminated or Modified

Terminates one of the Agency/Windsor agreements and amends the other to conform to the new Restructured Agreement.

1.6 Amendments

1.6(b) Language providing for amendment of annual acre-ft (AF) cap contained in Section 3.1 to conform to current general plan remains the same as contained in the 11th Amend. Agree.

1.6(c) This new subsection eliminates need for Forestville Water District’s consent for any future amendment of the Restructured Agree. unless such amendment would impair or affect Agency’s obligation to supply water to Forestville Water District.

1.7 Pledge of Revenues

Clarifies what revenues are pledged to the payment of Transmission System Revenue Bond Obligations and eliminates outdated language related to bonds, which have now been paid off.

1.8 Books, Records and Accounts

Language added to require detailed accounts be kept of new Operation and Maintenance sub-charges (i.e. Water Conservation, Water Management Planning, Watershed Planning and Restoration, and Recycled Water and Local Supply Projects).

1.12 Water Conservation Requirements

1.12 (a)* Adds requirements contained in the MOU re. water conservation (i.e. becoming member of California Urban Water Conservation Council and implementing

Best Management Practices (BMP) promulgated by said Council) and adds commitment to file annual report on BMP progress.

1.12(c) Adds pledge from Agency that it will use best efforts to apply the requirements of section 1.12 to Other Agency Customers and Russian River Customers.

1.12(d)* Makes clear that efforts that go beyond the BMPs are encouraged.

1.13* Recycled Water and Local Supply Project Requirements (new section)

Commits Water Contractors to use best efforts to bring local supply or recycled water projects on-line that will reduce demand on the Transmission System by 7,500 ac-ft within 10 years with approximately 50% of this amount to result from recycled water projects.

1.14 Transitional Provisions Applicable to Forestville Water District (FWD) (new section)

Transition referred to is removal of FWD as a prime contractor and transfer to “Other Agency Customer” classification. Physical and accountability provisions are: (1) transfer of ownership and O&M responsibility and cost of existing Forestville Aqueduct to FWD, (2) clarification that existing booster and reservoir are classified as “Storage Facilities”, and (3) funding of up to \$690,000 (plus cost escalation to commencement of construction) for new Forestville pipeline to be constructed, owned and operated by FWD, with construction to commence within 5 years.

1.15* Local Production Capacity Goal (new section)

Acknowledges that it is highly desirable that Water Contractors achieve and maintain local production capacity capable of satisfying 40% of average day of the maximum month demand.

PART 2 – PLANNING, FINANCING, ACQUISITION, CONSTRUCTION, OPERATION AND MAINTENANCE

2.2 Scheduling Additions and Replacements to the Existing Transmission System

Requirement that Valley of the Moon WD and City of Sonoma must both consent in writing before the Agency can award any construction contract for 2nd pipeline generally paralleling the Sonoma Aqueduct has been removed.

Clarification added that Agency can acquire and lease as well as construct emergency wells.

2.6* Recycled Water and Local Supply Projects (new section)

Adds recycled water and local supply projects that reduce demand on the Transmission System as projects that can be constructed under the new agreement and provides that such projects, including studies and investigations, must be approved by the WAC. Also eligible for funding is the costs of acquiring recycled water or the rights thereto. O&M costs of local supply or recycled water projects are not eligible for support under the agreement but are the responsibility of project sponsors.

2.7 Water Management Planning (new section)

Requires Agency to prepare a regional Urban Water Management Plan (current statute requirement is every 5 years). Each Water Contractor must approve the plan or prepare and adopt its own plan. (The Urban Water Management Plan requirements are contained in the California Water Code in Division 6, Part 2.6). The first comprehensive act was adopted by the State Legislature circa 1990 and by 2003 had been amended 15 times. It is a comprehensive act and continues to evolve. The act states the urban water supplier preparing the plan shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the service area prior to and during preparation of the plan.

2.8 Watershed Planning and Restoration (new section)

- 2.8(a) Provides that, with Agency's consent, the Agency may undertake any action, study or project approved by the WAC related to watershed planning and restoration (restoration and maintenance plans and projects, water quality monitoring, public education/outreach, third party studies/projects, ground water studies/investigations, etc.). Provides that before undertaking an action, study or project approved by the WAC, Agency shall consider suggestions from the public, Water Contractors and other interested parties/organizations and use best efforts to identify and obtain funding from benefited parties (i.e. federal, state, counties, special districts, urban/industrial development, agriculture,

gravel mining, forest harvesting, recreation, and sport and commercial fishing interests).

Note: It is important to note that the Agency can undertake fishery mitigation and enhancement projects in the Russian and Eel Rivers under the terms of the 11th Amend. Agree. This authority remains intact in the Restructured Agree. (refer to Section 1.2(ii)). Such projects do not require the approval of the WAC and are funded from the Russian River Projects Fund. Deposits into the Russian River Projects Fund consist of in lieu taxes paid by North Marin WD and Marin Municipal WD and property taxes levied on property in Sonoma County and other Agency general fund monies that are transferred into the Russian River Projects Fund (refer to Section 4.18(b) language which remains unchanged from the 11th Amend. Agree.).

2.8(b) Provides: (1) that Agency must agree to undertake actions, studies and projects approved by WAC, (2) that Agency can undertake any action or project not approved by the WAC provided it is not funded under the agreement, and (3) that Agency cannot be required to be a “regulator”.

2.8(c) Same as subsection (a) above, except permits Agency to carry out projects/activities that benefit only one (or more) Water Contractors. Approval of full WAC of project/activity is required, however, only benefited Water Contractor(s) who voluntarily enter into agreement with Agency pay for the project/activity via supplemental charges. Said supplemental charges must be approved by Agency and WAC.

2.9* Planning Coordination (new section)

Provides for coordination of planning with city and county planning and building departments.

PART 3 – WATER SUPPLY

3.1 Delivery Entitlements of Water Contractors

- 3.1(a) (Caution: If you are not reading a “clean” copy of the June 3, 2005 Draft, be aware that the column titles should read:

<u>Contractor/Aqueduct</u>	<u>Average Daily Rate During Any Month</u>	<u>Annual Amount During Fiscal Year (excluding Surplus Water)</u>
Water Contractor “x”	xx.x mgd	x,xxx AF

They get jumbled up in the strike-out versions.)

Forestville Water District’s 1.5 mgd average daily flow rate during any month entitlement is dropped and Town of Windsor is added with service to be provided from the Santa Rosa Aqueduct. A cap of 900 AF per fiscal year is included. Windsor’s direct diversions (as included in existing Agency/Windsor Agreement) are also listed (7.2 mgd and 4,725 AF cap). The last sentence of the subsection provides that these direct diversion entitlements are not included in allocation of water in the event of a temporary impairment of Transmission System capacity.

Essence of proposed agreement with Town of Windsor: Windsor owns and operates its own wells adjacent to the Russian River. For the purposes of water rights, water taken from these wells is classified as water directly diverted from the Russian River. Currently Windsor relies on the Agency for water rights to cover its direct diversions. Windsor has applied to the State Water Resources Control Board for its own water rights. The third sentence in the text at the end of Section 3.1(a) provides that Windsor will diligently pursue all actions necessary to obtain its own water rights. The current agreement between the Agency and Windsor regarding water rights is amended by the language contained in Section 1.4(b) of the Restructured Agreement to conform same to the new Restructured Agreement. As provided in Section 4.17, Windsor pays the charges set forth in Sections 4.13, 4.14, 4.15 and 4.16 for all water (both water delivered via the aqueduct and water directly diverted from the Russian River - whether under the Agency’s water right or its own.)

- 3.1(c) This new subsection makes it clear that water delivered to Santa Rosa from the new Kawana Pipeline is included as part of Santa Rosa’s average daily rate of flow during any month and is considered delivered from Reach 3a of the Intertie Aqueduct.

3.2 Conditions on Other Agency Customer Deliveries

- 3.2(b) Forestville is added and retains its current right to furnish water to Other Agency Customers within 2 miles of its corporate territory.

Excepted from 2-mile limit consent are new connections for “Agency” uses and “County of Sonoma” uses. New language is added which limits these potential uses.

- 3.2(d) New language is added that retains an average daily flow rate during any month entitlement of 1.5 mgd for FWD. In other words, up to 1.5 mgd of the 2.7 mgd flow rate for Other Agency Customers is assured to be available to FWD should it need it.

3.3 Deliveries in Excess of Entitlement Limits

- 3.3(b) This is a new subsection and provides the ability of any Water Contractor to transfer a portion of its surplus annual Entitlement Limit (cap) to another Water Contractor. Only “cap” transfer is allowed. The transfer is subject to a WAC approval process and any costs incurred; CEQA responsibilities, etc. lie with the recipient party. Addition of this subsection was prompted by the Valley of the Moon cap limitation issues.

3.4 Surplus Water

- 3.4(a) Future new connections to serve Surplus Water for commercial agriculture purposes are no longer allowed. Existing services for this purpose, however, are “grand fathered”.

- 3.4(e), (f)* These two new subsections are transferred from the existing MOU and provide for voluntary take-over of Surplus Water service by Water Contractors.

3.5 Shortage of Water and Apportionment

(Note: Allocation of water due to deficiency in water supply, i.e. water in the Russian River, is now placed in its own subsection (a). Allocation of water due to a temporary impairment of the Transmission System capacity (i.e. head works limitations, such as inadequate collector capacity, or inadequate aqueduct capacity, etc.) is likewise placed in its own subsection (b). As in the 11th Amended Agree, under both types of allocations, the methodology described essentially allocates water available in two basic steps. **First**, priority (allocation) is given to water necessary for “human consumption, sanitation and fire protection”. **Second**, remaining water available is allocated in proportion to entitlements but with the continuing proviso that the sum of the **First** plus **Second** allocations cannot exceed the

“reasonable requirements” determined by the Agency for any Agency Customer. Furthermore “reasonable requirements” cannot exceed the cap or Annual Entitlement Limit for any Customer.)

- 3.5(a)(2) “Environmental laws and regulations” are added as a cause beyond the Agency’s control that may cause for a deficiency in water supply.
- 3.5(a)(3)(i) Language is added to clarify that water available to Russian River Customers via their own water rights will be taken into account in determining allocations due to a deficiency of water available to the Agency.
- 3.5(a)(3)(ii) Clarification is made to make clear that the “average daily rate of flow during any month” Entitlement is the flow parameter used to allocate water during a deficiency among Water Contractors (and Other Agency Customers taken as a group).
- 3.5(b)(3) An existing proviso in the 11th Amend. Agree. provides that deliveries to MMWD will not be reduced due to inadequate capacity in the new aqueduct to be constructed generally paralleling the Petaluma Aqueduct. New language is added to make clear that the proviso is applicable only if the new aqueduct is paid for and dedicated to the Agency as provided for in the existing Agency/MMWD agreements.
- 3.5(c)(1) New language provides that in determining amounts of water for “human consumption, sanitation and fire protection”, both for allocations pursuant to either section 3.5(a) “shortage of water in the Russian River” or section 3.5(b) “transmission system capacity limitations”, that the Agency shall take into account the level of water conservation achieved and hardening of demand due to such conservation; and, that the methodology employed will: (1) reward and encourage conservation, (2) avoid cutbacks based on percentage of historic consumption and (3) base the amounts necessary for human consumption, sanitation and fire protection upon no greater than average indoor per capita use determined from recent winter billing records of all of the Water Contractors. A caveat is added that provides that if necessary or appropriate, the methodology shall consider commercial, industrial and institutional water uses separately.
- 3.5(c)(2) New language provides that in determining “reasonable requirements”, both for allocations pursuant to either section 3.5(a) “shortage of water in the Russian River” or section 3.5(b) “transmission system capacity limitations”, the Agency may take into account hardening of demand, the extent to which recycled water and local supply projects have been implemented and the extent to which water conservation provisions of the Restructured Agreement have been implemented. Furthermore language states: “It is the intention of the parties to this Agreement that the Agency make its

“reasonable requirements” determinations so as to encourage customers to implement water conservation, Recycled Water and Local Supply Projects.”

- 3.5(d) New subsection provides that the Agency shall, at all times, have an adopted water shortage allocation methodology consistent with the provisions of Section 3.5(a) and that it shall be sufficient to inform each customer of the water that would be available to it in the event of reasonably anticipated shortages and that same shall be included in the periodic Urban Water Management Plans prepared pursuant to Section 2.7.
- 3.5(e) New subsection. Provides for liquidated damages to be assessed during periods of a shortage of water in the Russian River or transmission system on a Water Contractor who is found to take water in excess of its allocation. The damage rate to be assessed is set equal to 50% of the O&M Charge and is to be multiplied times the amount of water taken in excess of allocations determined pursuant to section 3.5(a) or (b). Further, it is provided that by an affirmative vote, the WAC may request the Agency to physically limit water deliveries to the violator(s) or pursue all available legal remedies. Furthermore, the Agency commits to incorporate this provision in its other contracts (MMWD, Russian River Customers, etc.).
- 3.5(f) New subsection. Provides that notwithstanding the allocation provisions laid out in sections 3.5(a) or (b), that the WAC on its own initiative and subject to a unanimous vote, can determine how water that the Agency determines is available for the Water Contractors as a group shall be allocated.
- 3.5(g) New subsection. Provides that if Transmission System capacity is expanded by future amendments to the agreement, that in calculating allocations to FWD that are a function of average daily rate of flow Entitlements, that FWD’s allocation shall be made based on a denominator of 133.4 mgd. (Expansion of the Transmission System capacity would presumably increase this denominator for all the other Regular Customers.)

3.12 Marin Municipal Water Deliveries

Adds same revision noted in second part of 3.5(b)(3) above.

3.13 Damages for Peaking on the Transmission System or Taking Water in Excess of Average Daily Rate of Flow Entitlement Limits in Violation of Section 3.3

This is old Section 3.3(b) that provides a penalty for those who peak off the system or exceed their entitlement flow rates moved to its own section.

PART 4 – CHARGES AND PAYMENTS

4.1 Separate Charges and Funds

- 4.1(a) New sub-charges (Water Management Planning, Watershed Planning and Restoration, Recycled Water and Local Supply and Water Conservation) within the overall O&M Charge are recognized.

Now that the bonds on all the various aqueducts are paid off, these separate charges are consolidated into an “Aqueduct Facilities Charge” which in turn encompasses sub-charges for the Santa Rosa, Petaluma and Sonoma Aqueducts. Likewise, Storage, Common Facilities and North Marin Revenue Bond Charges are relabeled as Capital Charges. The Forestville Aqueduct Charge is deleted. The terminology “capital charge” is consistent with providing versatility for funding new or replacement facilities on a pay-as-you-go basis by setting the O&M charge higher than needed - then rolling the surplus over into the desired fund all as determined and approved by the WAC or via debt financing provided by the Agency.

The last sentence regarding “inclusion of a reasonable allowance for contingencies, etc.” is not new. It is just stated here, applying to all charges, rather than being repeated again and again.

4.2 Operation and Maintenance Charge

Language is added to recognize new sub-charges. Costs for projects covered by each one of these sub-charge categories have already been collected under the 11th Amend. Agree. as part of the O&M Charge but heretofore have not had separate designated funds. The authorization for collecting funds to support recycled water and local supply projects is contained in the existing MOU (see Section 5(a) of the MOU) and terminates on Sept. 30, 2005. The purpose for providing separate charges (and associated funds) is felt needed by the WAC as investments in watershed planning/restoration, conservation, and recycled water/local supply projects are fast becoming major components of the Agency’s overall budget and separate focus, tracking and accountability is desired.

Old agreement sections 4.3, 4.4, 4.5, and 4.6 (deleted)

Separate aqueduct charges (previously set forth in old Sections 4.3, 4.4, 4.5 and 4.6) are deleted as the bonds sold in 1955 to build these aqueducts have all been paid off. Provisions contained in these old sections pertaining to: (1) a safeguard for Agency revenue which allows for an additional aqueduct charge(s) (pick-up charge(s)) to be levied in the event of deficient revenue in any year, and (2) provision for establishing an aqueduct replacement charge, are moved to new section 4.6 (d) and (e).

4.3, 4.4 Pertain to North Main Water District

These sections are slightly reorganized but the meaning and fiscal effect is the same. They provide the “up-front cash-out” option North Marin Water District has in the 11th Amend. Agree. (and all prior agreement versions). Section 4.4(d) is new language - added to make it clear that North Marin can “cash out” on Agency bond financed aqueduct replacement costs as well.

4.6 Aqueduct Facilities Capital Charges (replacement section)

This new section takes the place of old 11th Amend Agree. section “4.10 Aqueduct Facilities Revenue Bond Charge” whose purpose was to allocate costs and provide for revenue to (1) pay for the Agency’s 1971 Revenue Bonds that were used to build the Russian River- Cotati Intertie and, (2) pay for Revenue Bonds the Agency is anticipated to sell to finance the new aqueduct facilities provided for in the 11th Amend. Agree. (aqueducts generally paralleling the Russian River-Cotati Intertie, and Petaluma and Sonoma Aqueducts).

- 4.6(a) A lead sentence is added to make it clear that sub-charges for the Santa Rosa, Petaluma and Sonoma Aqueducts are covered by this section. Which aqueduct a given Water Contractor is associated with is identified. The only change here is to delete FWD and the Forestville Aqueduct and designate Windsor as being a customer on the Santa Rosa Aqueduct.
- 4.6(b) The deleted ratios in this subsection pertain to cost sharing related to the 1971 Revenue Bonds which have, subsequent to the date of the 11th Amend. Agree., now been paid off. The remaining cost share ratios remain unchanged from the 11th Amend. Agree. and pertain to cost sharing to pay of bonds yet to be sold to build the anticipated new parallel aqueducts contemplated in the 11th Amend. Agree. and the associated Transmission System Facilities EIR for which a supplement is now being prepared.
- 4.6(d)(1), (2) and (3) There appears to be substantial new language in these subsections but it is not new. This language is transferred from the old deleted 1955 Bond Charge sections (old sections 4.3, 4.4, 4.5 and 4.6) and is the method contained in the 11th Amend. Agree. for raising additional revenue, if at the end of a given fiscal year, revenue is projected to be insufficient to meet debt service requirements for the ensuing fiscal year.
- 4.6(e) Likewise the apparent new language in this section is old language transferred from old sections 4.3, 4.4, 4.5 and 4.6. This language allows the Agency to sell bonds to finance major replacements. Also provided (unchanged) is the ability to levy a capital charge to produce revenue to finance major replacements. The levy approach (as in the 11th Amend. Agree.) requires the approval of the WAC. One thing that is new, however, is that the 11th Amend. Agree. provided for use

of Agency bonds to replace only the Santa Rosa, Petaluma and Sonoma Aqueducts. The drafters of the 11th Amend. Agree. did not make provision for using Agency bonds for replacement of the Intertie Aqueduct. The language contained in 4.6(e) is broadened to include all aqueducts.

4.12 Minimum Payments by Other Agency Customers

Rather than paying the “120% of highest price paid by any Water Contractor” required of Other Agency Customers, FWD’s charge is set equal to that paid by Water Contractors receiving deliveries from the Santa Rosa Aqueduct except that for the first 10 years, FWD does not pay the Santa Rosa Aqueduct Capital Sub-Charge (currently set at \$20/AF). This provision equates to charges currently paid by FWD.

4.13 Operation and Maintenance Charge – Water Management Planning (new section)

Provides for sub-charge to pay for Urban Water Management Plans provided for in new section 2.7.

4.14 Operation and Maintenance Charge – Watershed Planning and Restoration (new section)

- 4.14(a) Creates authority for Agency to calculate and collect a Watershed Planning and Restoration Sub-Charge.
- 4.14(b) After first deducting funding provided by other sources including the Russian River Projects Fund, provides for sub-charge to pay for (1) fishery mitigation/enhancement, environmental compliance (including ESA compliance projects) if reasonable necessary to provide water for Regular Customers and (2) watershed planning and restoration authorized by WAC as provided for in new section 2.8. Proceeds cannot be used for the capital or operation and maintenance cost of recreational facilities. Note: This language permits the Agency to fund fishery mitigation and enhancement projects from the Russian River Projects Fund and the new Watershed Planning and Restoration Sub-Charge.
- 4.14(c) Charge capped at \$35/AF for first five years.
- 4.14(d) Agency required to periodically prepare analysis that: (1) identifies planned fishery mitigation, enhancement and environmental compliance activities, projects and costs, (2) identifies beneficiaries, (3) includes proposed allocation of costs among benefited parties and, (4) recommends funding sources.
- 4.14(e) Agency required to use its best efforts to amend agreements with Russian River Customers to require payment of this sub-charge on water diversions or to fund

or implement watershed planning and restoration projects at a level equivalent to that funded by the Agency under the new Restructured agreement.

4.14(f) Allows Agency to also assess special supplemental charges as provided by section 2.8(c) (refer to explanation of 2.8(c) above).

4.14(g) Creates fund and requires separate accounting for section 4.14(f) special supplemental charges.

4.15 Operation and Maintenance Charge – Recycled Water and Local Supply (new section)

Creates fund and provides for sub-charge to pay for Recycled Water Projects and Local Supply Projects provided for in new section 2.6. Caps charge at \$35/AF for first five years. Agency required to use its best efforts to amend agreements with Russian River Customers to require payment of this sub-charge on water diversions. Provides that payments by Windsor on direct diversions shall be separately accounted for and made available to Windsor for funding Windsor's local or regional Recycled Water Projects.

4.16 Operation and Maintenance Charge – Water Conservation (new section)

4.16(a) Creates fund and provides for sub-charge to pay for Water Conservation Projects including funding of the already approved and in progress \$15 million dollar June 29, 1998 Water Conservation Plan.

4.16(b) Agency required to use its best efforts to amend agreements with Russian River Customers to require payment of this sub-charge on water diversions or to fund or implement Water Conservation Projects at a level equivalent to that funded by the Agency under the new Restructured agreement. Provides that payments by Windsor on direct diversions shall be separately accounted for and made available to Windsor for funding Windsor's Water Conservation Projects.

4.17 Payments by Town of Windsor (new section)

4.17(a) Provides that for the first 15 years, Windsor to pay 120% of the Santa Rosa Aqueduct price per AF. The 20% "extra" is to be credited to the Santa Rosa Aqueduct Capital Fund.

4.17(b) For all water diverted directly from the Russian River, whether under the Agency's water rights or Windsor's water rights, Windsor to pay the charges provided for in sections 4.13, 4.14, 4.15, and 4.16.

PART 5 – WATER ADVISORY COMMITTEE/TECHNICAL ADVISORY COMMITTEE

5.1 Purpose

Provides for a two-tier WAC by adding a Technical Advisory Committee whose purpose is to make recommendations to the WAC.

5.3 Composition and Voting

- 5.3(a) Provides for designation of an alternate and that the WAC representative and alternate be elected members appointed by their governing board. Provides for quarterly meetings of WAC as determined necessary – at least one meeting per year to include a member of the Board of Directors of the Agency (BOS) designated as liaison. Voting remains unchanged with an affirmative vote requiring at least 50% of the weighted vote plus the approval of 5 of the 8 representatives (Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Windsor, NMWD, and VOMWD). The attachment shows voting weights, which are unchanged from 11th Amend. Agree. except that Windsor takes the place of FWD. As before MMWD can participate in meetings but has no vote. Votes of the WAC must be recorded.
- 5.3(b) New subsection. Provides for Technical Advisory Committee (TAC) made up of one non-elected representative selected by each Water Contractor. TAC is generally to meet monthly as necessary; voting is same as for WAC. MMWD represented but has not vote. WAC may require TAC to create subcommittees and ad hoc committees. Persons serving on such committees must be elected officials, staff or contract staff of the Water Contractor.
- 5.3(c) New subsection. TAC must create a standing Water Conservation Subcommittee whose chief function is to monitor water conservation program progress laid out in Section 1.12 and make recommendations to the TAC regarding same.
- 5.3(d) This section provides for a vice chair in addition to the chair, both to be selected from the members of the WAC. Added is new language making explicit the term of the chair, succession, etc.
- 5.3(e) New subsection. Powerful addition to the agreement which provides that annually by November 1st of each year, the WAC shall review Water Conservation Projects, Recycled Water Projects and Local Supply Projects and approve and report to Agency those projects that are to receive funding in the next or ensuing fiscal year(s). This “power” formally memorializes the current so-called “LRT2” (Local Supply, Recycled Water and Tier 2 Conservation) process authorized by the MOU, which will terminate on September 30, 2005 when the current MOU expires (unless extended). Also added in this

subsection is an expression of intent that Regular Customers of the Agency, over the term of the new agreement, will receive funding support for projects in proportion to amounts paid into the Recycled Water/Local Supply Fund and Water Conservation Fund.

Attachment

Voting Power of WAC in Proposed Restructured Agreement

Pursuant to Section 5.3(a), approval by WAC requires both:

- a. 5 of the 8 Water Contractors, plus**
- b. a simple majority of the Voting Weight**

Party	Avg. Daily Rate of Flow During Any Month Entitlement Limit, mad	Voting Weight (1)
Water Contractors:		
1 Rohnert Park	15.0	11.2%
2 Windsor	1.5	1.1%
3 Cotati	3.8	2.8%
4 Sonoma	6.3	4.7%
5 Valley of the Moon WD	8.5	6.4%
6 North Marin	19.9	14.9%
7 Petaluma	21.8	16.3%
8 Santa Rosa	56.6	42.4%
Sub-total	133.4	100.0%
Other Agency Customers (2)	2.7	no vote
Marin Municipal WD (3)	3.8	no vote
Surplus Customers (4)	0.0	no vote
Total	139.9	

Notes:

- 1 Voting Power is proportional to average daily rate of flow during any month Entitlement Limit of Water Contractors (all signers of agreement except SCWA and Forestville WD).
- 2 Includes Forestville WD, Lawndale, Kenwood, etc. Although having an Entitlement, "Other Agency Customers" do not have a vote on the WAC.
- 3 Marin Municipal WD may participate in discussions of WAC. It has no average daily rate of flow Entitlement Limit in the Restructured Agreement but is guaranteed access to surplus capacity (often referred to as off-peak capacity). Based on the current configuration of the aqueduct system, SCWA has estimated this to be 3.80 mad during summer periods provided no Interim Impairment of the Aqueduct Transmission System exists.
- 4 Surplus Customers have no entitlement and are subject to service disruption if necessary to supply Regular Customers. Regular Customers = Water Contractors + Other Agency Customers.